IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21-12-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE J.A.K. SAMPATH KUMAR

HABEAS CORPUS PETITION NO.750 OF 2006

Harpinder Singh
S/o. Gurudev Singh .. Petitioner

Vs.

1. The State of Tamil Nadu,
   Rep. by the Secretary to the
   Government, Public (SC)
   Department, Fort St. George,
   Chennai 600 009.

2. The Union of India, rep. by
   the Secretary to the Government,
   Ministry of Finance,
   Department of Revenue (Cofeposa Unit),
   New Delhi.

3. The Superintendent,
   Central Prison,
   Chennai 600 003. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Habeas Corpus calling for the records relating to the detention order in G.O.No.S.R.1/532-2/2006 dated 28.7.2006 passed by the first respondent and quash the same and direct the respondents to produce the body of the person of the detenu, namely, Harpinder Singh, son of Gurudev Singh before this Court, now detained under Section 3(1)(i) of the COFEPOSA Act in the Central Prison, Chennai and set him at liberty.

For Petitioner : Mr.B. Kumar,
Senior Counsel for
Mr. Palani Kumar

For Respondents : Mr.M. Babu Muthu Meeran
Addl. Public Prosecutor

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J U D G M E N T

P.K. MISRA, J

The detenu has filed this Habeas Corpus Petition challenging the order of detention dated 28.7.2006 passed by the Government of Tamil Nadu detaining the detenu under Section 3(1)(i) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (Central Act 52 of 1974), hereinafter referred to as "the Act".

2. The order of detention has been passed on the following grounds:-

On 26.6.2006, the detenu arrived at Chennai from Bangkok by flight. When he was questioned, the detenu produced five Baggage Claim Tags, out of which 4 were in the name of the detenu. The detenu declared that the checked in baggage as well as hand baggage were containing clothes, cosmetics and personal belongings and all the checked in baggage were held up at Bangkok. Examination of hand baggage resulted in recovery of 1040 nos of 512 MB Multimedia Cards, value of which was Rs.6,24,000/- and the said goods were seized. In the voluntary statement, the detenu confessed about the aforesaid aspects. By attempting to smuggle 512 MB Multimedia Cards by way of misdeclaration with an intention to evade customs duty in violation of Sections 72 and 79 of the Customs Act, the detenu was liable to be prosecuted under Sections 132 and 135 of the Customs Act as well as Section 112 of the Customs Act. On further verification it was found that the checked in baggage had been sent to Chennai along with passenger and no baggage was pending in the custody of airways either in Chennai or in Bangkok. From the above basic materials, the State Government being satisfied that the detenu had involved in smuggling goods, considered necessary to pass the order of detention.

3. In the Habeas Corpus Petition as originally filed and as per the additional grounds permitted to be taken, the following contentions are raised :-

(1) The detenu was arrested on 27.6.2006 and when he was produced before the Magistrate, he was remanded to judicial custody till 11.7.2006, which was subsequently extended upto 8.12.2006, and the detenu was in custody at the time when the order of detention was passed and thus there was no reason or compelling necessity to pass the order of detention and such order has been passed on non-application of mind.

(2) The incident took place on 26.6.2006 and the detention order was passed on 28.7.2006, after a lapse of about five weeks,

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which indicated that there was no compelling necessity to pass the order of detention.

(3) While passing the order of detention, the detaining authority has taken into consideration the market value of the goods, but the detaining authority has failed to supply the relied on documents for the purpose of ascertaining such value.

(4) In the telegram sent on 27.6.2006, it was stated that the detenu was produced before the learned Additional Chief Metropolitan Magistrate, Economic Offences-I, Egmore on 27.6.2006 and was remanded and detained in Central Prison, but the initial order of remand indicates that the detenu was produced before the Magistrate at his residence and, therefore, there was contradiction between those two documents, by which the detenu and his family members were confused.

(5) The detenu's mother tongue was Punjabi and he knows only Punjabi and Hindi and he does not know to read and understand English, but the order of detention, grounds of detention and the booklet supplied to the detenu on 29.7.2006 and 1.8.2006 were in English and since the detenu had no working knowledge in English, he was handicapped in making an effective and meaningful representation.

(6) The detenu had sent a retraction letter on 5/6.7.2006. Subsequently, he made a representation requesting the detaining authority to supply all the documents in the language known to him, but such request was not complied with. The sole incident cannot be taken as a ground for passing the order of detention.

(7) The representation dated 4.8.2006 sent by the brother-in-law of the detenu to the Central Government and the State Government through speed post had not been considered and there was unexplained and unreasonable delay.

(8) The detenu had sent a pre-detention representation/retraction letter on 7.7.2006 addressed to the Law Minister of the State, Chennai through the Superintendent of Central Prison, but such pre-detention representation had not been placed before the detaining authority while passing the detention order. Subsequently, many representations were sent to the Advisory Board and the State Government, which were received, but were not considered.

4. In the counter affidavit filed on behalf of the Respondent No.1, sworn to by the Deputy Secretary to Government, Public (Law and Order) Department, it has been stated inter alia that the order of detention was passed on the materials available on

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record and on application of mind. It has been stated that the detenu had received the copy of the seizure list by signing in English and the voluntary statement had also been made by the detenu in English and such statement had been made voluntarily and not by force. It has been further stated that even though the petitioner was a remand prisoner at the time of passing the order of detention, there is possibility of the detenu being released on bail and, therefore, there was necessity to pass the order. There is no delay in passing the order and the detaining authority had considered all the aspects before passing the order.

Regarding the grounds taken in the additional affidavit, it has been stated that pre-detention representation of the detenu dated 8.7.2006 (7.7.2006 was corrected as 8.7.2006 by the detenu) addressed to the Minister of Law was in Hindi. This representation was forwarded to the Minister for Revenue and Law by the Superintendent, Central Prison and it was received by the Office of the Minister on 10.7.2006 and the same was forwarded to the Tamil Development and Culture Department (Translation Wing) for translation of the Hindi representation into English. Home Department got the representation translated into English and came to know that the subject relates to COFEPOSA and forwarded the representation to Public (Law and Order) Department. The Public Department received the representation with English translation on 19.10.2006 and rejected the same on 3.11.2006, which was subsequently served on the detenu on 4.11.2006. The other representations made by the detenu had been duly considered and rejected by the appropriate authorities. Since the pre-detention representation with translation was received only on 19.10.2006, there was no possibility of placing the pre-detention representation before the detaining authority. Further details have been furnished regarding the disposal of other representations.

5. At the time of hearing, learned counsel appearing for the petitioner has concentrated on the aspect relating to non-consideration of the pre-detention representation and thereafter careless delay in dealing with such representation.

6. By a series of decisions of Madras High Court, it has been held that any pre-detention representation made by the detenu or on his behalf should be considered by the detaining authority and if for some reason it is not possible to consider such representation before the order of detention is passed, such representation should be thereafter considered as expeditiously as possible.

7. In (1992)2 CTC 490 (T.M. SYED ALI v . STATE OF TAMIL NADU), a Division Bench of this Court held that representation made

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denying the very occurrence before passing of the order of detention is required to be considered by the detaining authority. In the said case it was also indicated that it is the duty of the functioning authority to forward such representation to the Government and failure to consider such representation would vitiate the order of detention.

8. Similar view has been taken in several decisions subsequently and it is not necessary to multiply the authorities save and except referring to a very recent Division Bench decision of this Court in (2006) 1 M.L.J.(Crl.)131 (P.M.S. MOHIADEEN SAHIB v. STATE OF TAMIL NADU), wherein the ratio of the decision in (1992)2 CTC 490 (cited supra) has been followed.

9. In the present case, such pre-detention representation was admittedly received in the Office of the Law Minister on 10.7.2006. It is of course true that such representation was in Hindi. According to the learned Addl. Public Prosecutor, since such representation was in Hindi and since at the time of receipt of the representation the detenu was a remand prisoner, such representation was forwarded to the Home Department and thereafter the English translation of such representation was made available only on 19.10.2006 and as such there was no occasion to consider such representation before 28.7.2006. He has also contended that the representation was addressed to the Law Minister, which was not appropriate.

10. From the materials on record, it appears that the detenu had emphasised about such earlier representation in his further representations dated 4.8.2006 and 23.9.2006. Such subsequent representations dated 4.8.2006 and 23.9.2006 were rejected on 18.9.2006 and 9.10.2006 respectively by stating that no pre-detention representation had been received. It appears that except stating that the representation received in the office of the Law Minister was forwarded to the Home Department and the Home Department forwarded the same to the Tamil Development and Culture Department for translation and the English translation was made available on 19.10.2006 (after a gap of about 3 months and 10 days), nothing has been indicated as to what transpired between 10.7.2006 and 19.10.2006.

11. Learned counsel appearing for the respondents has placed reliance upon the decision reported in (2006) 2 M.L.J.(Crl.) 745 (D. ANURADHA v. JOINT SECRETARY AND ANOTHER). In the said case, the order of detention was under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act. Several representations had been made by or on behalf of the detenu from time to time. Four of the representations had been disposed of without any unreasonable or unexplained delay. However, there was delay of 119 days in

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disposing of fifth representation, which had been made to the Central Government in Tamil. By taking note of the explanation furnished, the Supreme Court observed that delay was caused mainly due to non-availability of the translated copy of the representation which has been made in Tamil and it had been taken about 3 months for getting translated. As soon as the translated copy was received, the authorities had taken urgent steps to dispose of the same within a very short period.

12. It is no doubt true that since the representation was written in Hindi, it was required to be translated and the translation may take some time. However, it was incumbent upon the respondents to explain those aspects by giving more particulars and even by giving affidavits of the persons concerned. It is difficult to envisage that it took more than 3 months to translate a representation of about 3 pages. It is of course true that initially at the time when the representation was received the detenu was a remand prisoner and there was no order of detention and the authorities might have taken their own time. However, it is apparent from the subsequent representations dated 4.8.2006 and 23.9.2006 that it had been emphasised about the pre-detention representation. At that stage, at least the authorities should have tried to find out as to what happened to the pre-detention representation dated 7/8.7.2006. On the other hand, the authorities rejected such subsequent representation by simply stating that no such pre-detention representation had been received. Instead of bothering to find about the pre-detention representation, of which representation was made repeatedly by the detenu, the authorities exhibited a rather careless and indifferent attitude by simply stating that pre-detention representation had not been received.

13. In several decisions of the Supreme Court as well as the Division Bench of this Court it has been laid down that a representation made by or on behalf of the detenu must receive a real and proper consideration. Many of such decisions have been noticed and followed by the Division Bench in (2006) 1 M.L.J.(Crl.) 131 (already cited), wherein after noticing such authorities it has been observed:-

> "13. In the light of the above principles, we are of the view that though the detenu has made pre-detention representation on 4.7.2005, which was received by the Superintendent, Central Prison, Chennai-9, and forwarded to the addressee, Law Minister, Government of Tamil Nadu on 5.7.2005 itself, in view of the fact that the same had been reiterated in the representation dated 21.7.2005, the detaining authority ought to have verified the earlier representation and passed the order after due consideration. We are satisfied that the detaining

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authority failed to consider these relevant aspects and the detenu is entitled to succeed."

14. In view of the above, keeping in view the well settled principle that a representation (whether pre-detention or post-detention) is required to be considered by application of mind, we are constrained to come to the conclusion that the order of detention got vitiated.

15. Apart from the above, learned Senior Counsel for the petitioner has raised the contention relating to non-supply of documents in the language known to the detenu, namely, Hindi. This aspect has been challenged by the State Government by stating that the detenu himself has written the voluntary statement in English. It is contended by the Senior Counsel that the detenu was not very much conversant with English and he had merely copied certain type of questions in capital letters in English which would indicate that the voluntary statement was extracted and also would indicate that the detenu was not very much conversant with English. However, since the order of detention has been found to be vitiated on account of the fact that pre-detention representation had not been placed before the appropriate authority and thereafter it has been considered belatedly, it is not necessary to go into this aspect.

16. In course of hearing, learned Addl. Public Prosecutor has submitted that the detenu has deliberately filed the representation in Hindi with a view to mislead the authorities and take advantage which should not be permitted. In this connection, he has referred to the decision of the Supreme Court reported in (2006) M.L.J. (Crl.) 745 (D. ANURADHA v. JOINT SECRETARY AND ANOTHER).

17. Admittedly, the detenu is a resident of Punjab and even according to his confessional statement he had studied only upto class X. It is obvious that his knowledge in English may not be of high order. Naturally one would expect that the detenu would make representation in the language in which he is more familiar rather than in English. Such representation had been made by the detenu himself. It is no doubt true that some of the subsequent representations were in English made through other relations. But, merely because the detenu had made a representation in Hindi it cannot be concluded that he was adopting a tactic of misleading the State to take advantage of any loophole in future. The decision of the Supreme Court relied upon by the State was passed on completely different set of facts and the ratio of such decision cannot be made applicable to the present case.

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18. For the aforesaid reasons, the Habeas Corpus Petition is allowed and the order of detention is set aside and the detenu is directed to be set at liberty forthwith from the custody unless he is required in connection with any other case.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

dpk

To

1. The Secretary to the
   The State of Tamil Nadu,
   Public (SC) Department,
   Fort St. George,
   Chennai 600 009.

2. The Secretary,
   The Union of India,
   Ministry of Finance,
   Department of Revenue (Cofeposa Unit),
   New Delhi.

3. The Superintendent,
   Central Prison,
   Chennai 600 003.

4. The Public Prosecutor, High Court, Madras

5. The Joint Secretary to Government,
Public (Law and order) Department, Fort St. George,
Chennai-9

6. The Sub Assistant Registrar,
COFEPOSA Section,
High Court, Madras.

HCP.NO.750/2006

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